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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH L. FINNELL, JR.,

Defendant and Appellant.

B294887

Los Angeles County

Super. Ct. No. MA037673

APPEAL from an order of the Superior Court of  
Los Angeles County, Daviann L. Mitchell, Judge. Affirmed.

Tracy A. Rogers, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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On April 4, 2008, a jury convicted defendant and appellant Kenneth L. Finnell, Jr., of second degree murder (Pen. Code,<sup>1</sup> § 187) and assault with a firearm (§ 245, subd. (a)(2)). The jury also found true firearm allegations under sections 12022.5 and 12022.53, subdivisions (b), (c), and (d). On April 24, 2008, Finnell was sentenced to 15 years to life for the murder, with 25 years to life under section 12022.53, subdivision (d). He received a concurrent three-year sentence for assault with a firearm, plus an additional four years under section 12022.5. This court affirmed the judgment on November 12, 2009. (*People v. Finnell* (Nov. 12, 2009, B207784) [nonpub. opn.].)

In October 2018, Finnell filed in propria persona a “Petition to Retroactively Apply SB 620 to Petitioner’s Conviction on P.C. 12022.53(d).” The trial court denied the petition on November 2, 2018, reasoning that Senate Bill No. 620 (2017-2018 Reg. Sess.) § 2 (SB 620) did not entitle Finnell to relief because his conviction was final before the passage of the bill. Finnell filed a timely appeal.

Finnell’s court-appointed counsel filed an opening brief raising no issues, and asked this court to conduct an independent review of the record under *People v. Wende* (1979) 25 Cal.3d 436. We advised Finnell that he had 30 days to submit by brief or letter any contentions or arguments he wished us to consider. Finnell filed a supplemental brief.

SB 620 and the amendment to section 12022.53, effective January 1, 2018, apply retroactively only to judgments that are not yet final. (*People v. Harris* (2018) 22 Cal.App.5th 657, 659.) The legislature could have, but did not, “provide a specific

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<sup>1</sup> All subsequent statutory references are to the Penal Code.

procedure via petition or motion to reopen final cases for resentencing.” (*Id.* at p. 662.) Finnell was convicted in 2008 and we affirmed his conviction in 2009. The judgment against him was final years before the January 1, 2018 effective date of SB 620. He is not entitled to the application of SB 620.

Finnell’s supplemental brief points out that as amended by SB 620, section 12022.53, subdivision (h) now states: “The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.” He contends he has an “independent right to resentencing” under section 1170, subdivision (d), which states: “[T]he court may, *within 120 days of the date of commitment* on its own motion . . . recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence.” (§ 1170, subd. (d)(1), italics added.) The time for the court to recall Finnell’s sentence is long past, and section 1170 does not entitle Finnell to resentencing.

We have examined the record and are satisfied no arguable issues exist, and Finnell’s attorney has fully complied with the responsibilities of counsel. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at pp. 441-442.)

**DISPOSITION**

The order is affirmed.

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EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J.